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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FCP - 203742

PRELIMINARY RECITALS

Pursuant to a petition filed on November 21, 2021, under Wis. Admin. Code § DHS 10.55, to review a decision by the MY Choice Family Care regarding Medical Assistance (MA), a hearing was held on January 5, 2022, by telephone.

The issue for determination is whether the agency properly denied Petitioner's request for authorization of weekly costs associated with the dietary planning, preparation, packaging, and shipping of meals by a private vendor ([REDACTED]) that was recommended by a treating physician for the purpose of losing weight and improving diabetic management.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
MY Choice Family Care
10201 Innovation Dr, Suite 100
Wauwatosa, WI 53226

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 41-year old resident of Jefferson County who has been enrolled in the Family Care Program since at least 2014. He is currently served by MyChoice Wisconsin managed care organization (MC) and was previously served by Care Wisconsin.
2. Petitioner has diagnoses including but not limited to: attention deficit disorder, mild cognitive disability, learning disability, major depressive disorder, anxiety, cerebral palsy, hydrocephalus, hypertension, morbid obesity, sleep apnea, Type 2 diabetes, and an eating disorder.
3. Petitioner, who lives alone in an apartment, receives the following authorized services: five hours per week of supportive home care / personal care; adult day programming; and home health care to administer injection and monitor medications.
4. Between 2006 and 2014, Petitioner's weight increased from 206 pounds to 314 pounds. He failed multiple weight loss programs including consultations with dietitians, Jenny Craig, lock boxes, and counseling.
5. Following Petitioner's failed weight loss attempts, [REDACTED], one of Petitioner's treating physicians, recommended the Seattle Sutton diet plan. That recommendation was endorsed by several of Petitioner's health care providers both in 2014 and again in 2021. See Petitioner's Exhibits 5a – 12.
6. Due to his various disability-related impairments, Petitioner is unable to independently and safely plan and prepare meals consistent with a diet appropriate for an individual with diabetes to lose and maintain weight loss.
7. Seattle Sutton meals are planned by a dietitian and delivered to Petitioner's apartment. The meal plan follows guidelines for weight reduction endorsed by the American Heart Association and the American Diabetes Association.
8. From approximately 2014 through 2016, Family Care authorized reimbursement for the non-food portion of costs associated with Seattle Sutton meal delivery as a self-directed service and Petitioner achieved significant weight loss at that time but then stopped using Seattle Sutton for several years.
9. After being advised by his health care providers that he needed to lose weight and that he was at risk of becoming insulin-dependent, Petitioner began using Seattle Sutton again in early 2021. As of December 2021, he had lost 29 pounds and reduced his hemoglobin A1C from 8.7% to 7.3%, reflecting improved control of his diabetes. Petitioner's Exhibit 5a.
10. On June 18, 2021, Petitioner filed a request for a new authorization of the non-food costs associated with the Seattle Sutton meal plan (i.e., dietitian services, labor for food preparation, packaging and shipping costs) to meet his long-term care outcomes of wanting to manage his diabetes and to remain in his preferred living environment.
11. On July 15, 2021, the MCO issued a written denial of Petitioner's request and listed the following reasons for the denial: (1) Petitioner has Medicare, Medicare includes coverage of diabetes education, and meeting with a dietitian which would be a duplication of services; (2) Seattle Sutton is not a Medicaid provider; and (3) Petitioner can make simple meals and reheat meals which makes him ineligible for home-delivered meal costs.
12. In order to assist Petitioner in meeting his identified long-term care outcomes, the MCO agreed to authorize eight additional hours of supportive home care each week "to mimic what Seattle Sutton does" (i.e., to assist Petitioner with grocery shopping and preparing, portioning, and labelling meals appropriate to assist in weight loss and diabetes management).

13. The costs of the Seattle Service-related services requested by Petitioner amount to \$74.50 per week. The cost of 8 hours per supportive home care per week to assist Petitioner with services to “mimic Seattle Sutton” is \$182.
14. On August 25, 2021, the MCO’s Grievance and Appeal Committee upheld the original denial.

DISCUSSION

Family Care (FC) is a Medical Assistance funded program intended to meet the long term care and health care needs of target groups consisting of frail elders; individuals age 18 and older who have physical disabilities, as defined in Wis. Stat. §15.197 (4) (a) 2.; and individuals age 18 and older who have developmental disabilities, as defined in Wis. Stat. §51.01 (5) (a). FC is administered by the Department of Health Services (DHS). DHS contracts with several managed care organizations (MCOs) throughout the state to provide case management which includes the development of individual service plans (ISPs) and the authorization of allowable and appropriate long term care services for individual FC recipients. The ISP must reasonably and effectively address all of the FC recipient’s long-term needs and outcomes, assist the recipient to be as self-reliant and autonomous as possible, and be cost effective when compared to alternative services or supports that could meet the same needs and achieve similar outcomes. Wis. Admin. Code, §DHS 10.44(2)(f).

Petitioner here is asking that Family Care authorize coverage of the non-food costs associated with the Seattle Sutton meal plan, a service recommended and endorsed by several of his treating physicians only after he had tried and failed several other weight loss strategies. Petitioner’s parents, who appeared on his behalf at hearing, explained that Petitioner has Type II diabetes and, given his weight, is at risk of becoming insulin-dependent which would jeopardize his ability to continue living independently because he would likely require someone to closely monitor his insulin regimen. Petitioner provided detailed letters from several physicians dated in 2014 and in 2021 that support the testimony offered by his parents regarding both the rationale for seeking coverage of Seattle Sutton related costs and that document the success Petitioner has had in losing weight and lowering his A1C, a measure used to assess how well-controlled an individual’s blood sugar is, after beginning to use Seattle Sutton.

The MCO did not dispute the need for Petitioner to lose weight, the importance of Petitioner increasing control of his diabetes, or the risks to his health and independence if he fails to do so. Similarly, the MCO did not dispute the demonstrated efficacy of Seattle Sutton for Petitioner. Indeed, the MCO agreed to authorize eight additional hours of supportive home care to “mimic” the services of Seattle Sutton at a cost that is greater than the costs of the services requested by Petitioner. When asked why the MCO made that choice, given that is plainly not cost-effective, a representative for the MCO explained that Seattle Sutton is not a Medicaid provider—one of the reasons for denial cited in the MCO’s written denial notice. When asked why the requested service cannot be authorized on the same terms (i.e., as a self-directed support) as the MCO’s predecessor entity authorized the service in 2014, the MCO representative stated that doing so “was explored” but that the MCO’s coverage guidelines have changed. The MCO did not offer additional detail, did not produce a copy of the comparative relevant “guidelines”, and did assert that the terms of the waiver or federal law prohibit authorizing the requested services as a self-directed support.

The record here shows that Petitioner is not seeking home-delivered meals or help with the task of warming up food. Rather, he is seeking assistance in selecting, preparing, and portioning food that is appropriate for a diabetic and that will facilitate weight loss and/or lowered blood sugars. The MCO has agreed that assistance with selecting and preparing nutritious meals is service that the Family Care Program can and does authorize but typically does so by paying a supportive home care worker. The MCO has not established that its decision to deny an alternative to its typical approach is reasonable where that alternative is less expensive, preferred by Petitioner, recommended by Petitioner’s long-time

treating physicians, and already proven to be successful in helping Petitioner to lose weight and lower his A1C.

For the reasons set forth above, I am remanding the matter to the MCO to authorize the requested \$74.50 per week non-food costs of the Seattle Sutton meal plan on the same terms as Family Care previously authorized the same service for Petitioner for the next twelve months or until a relevant change in Petitioner's circumstances, whichever occurs first.

CONCLUSIONS OF LAW

The agency did not properly deny Petitioner's request for authorization of weekly costs associated with the dietary planning, preparation, packaging, and shipping of meals by a private vendor (Seattle Sutton) that was recommended by a treating physician for the purpose of losing weight and improving diabetic management.

THEREFORE, it is

ORDERED

That the matter is remanded to the MCO with instructions to reverse the prior denial of the requested services and to authorize those services as a self-directed support. The MCO shall comply with this order within ten days of the date of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

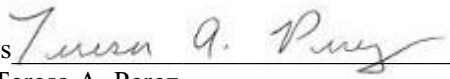
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

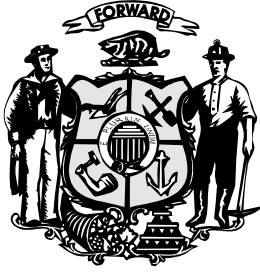
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 7th day of February, 2022

\s 

Teresa A. Perez
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 7, 2022.

MY Choice Family Care
Office of Family Care Expansion
Health Care Access and Accountability